

**BOARD OF ADJUSTMENT MEETING
CITY OF FORT LAUDERDALE
WEDNESDAY, APRIL 11, 2012 – 6:30 P.M.
CITY HALL CITY COMMISSION CHAMBERS – 1ST FLOOR
100 NORTH ANDREWS AVENUE
FORT LAUDERDALE, FLORIDA**

Board Members	Attendance	Cumulative Attendance 6/2011 through 5/2012	
		Present	Absent
Diana Waterous Centorino, Chair	P	9	1
Michael Madfis, Vice Chair	P	8	2
Caldwell Cooper	P	10	0
Karl Shallenberger [arrived 6:42]	P	9	1
Henry Sniezek	P	8	2
Fred Stresau	P	9	1
Birch Willey	P	10	0
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Alternates			
Roger Bond [left at 7:20]	P	6	0
Sharon A. Zamojski [arrived 6:42]	P	9	1
Charlie Ladd	P	2	0

Staff

Bob Dunckel, Assistant City Attorney
Gail Jagessar, Administrative Aide
Mohammed Malik, Chief Zoning Plans Examiner
Anthony Fajardo, Zoning Administrator
Greg Brewton, Planning and Zoning Director
B. Chiappetta, Recording Secretary, Prototype Inc.

Communication to the City Commission

None.

Purpose: Section 47-33.1.

The Board of Adjustment shall receive and hear appeals in cases involving the ULDR, to hear applications for temporary nonconforming use permits, special exceptions and variances to the terms of the ULDR, and grant relief where authorized under the ULDR. The Board of Adjustment shall also hear, determine and decide appeals from reviewable interpretations, applications or determinations made by an administrative official in the enforcement of the ULDR, as provided herein.

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Call to Order

Chair Centorino called the meeting to order at 6:30 p.m. She introduced Board members and determined a quorum was present.

Approval of Minutes – March 2012

Motion made by Mr. Cooper, seconded by Mr. Stresau, to approve the minutes of the Board's March 2012 meeting. In a voice vote, motion passed unanimously.

Board members disclosed communications they had and site visits made regarding items on the agenda.

All individuals wishing to speak on the matters listed on tonight's agenda were sworn in.

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1. **APPEAL NO. 12-01**

APPLICANT: Daniel Grant (*Deferred from January 11, 2012*)
LEGAL: "North Ridge", P.B. 30, P. 32, Block 6, Lot 29
ZONING: RS- 8 (Residential Single Family/Low Medium Density District)
STREET: 2012 NE 19th Avenue
ADDRESS: Fort Lauderdale, FL
DISTRICT: 2

APPEALING: Section 47-35 (Definitions)

Appealing an interpretation made by the Zoning Administrator of Section 47-35. Definitions, where the Code states:

Structure: Anything built or constructed or erected, the use of which requires more or less permanent location on the land, or attached to something having a permanent

location on the land, or any composition, artificially built up or composed of parts joined together in some definite manner or any roof like structure or storage apparatus whether movable or non-movable which may or may not be self-supporting or may or may not be affixed to a "structure," as defined herein, or to a building.

The Zoning Administrator has determined that the car shade is a Structure as defined by the ULDR and as indicated in the attached staff report. The applicant argues that the car shade is not a Structure as defined by the ULDR.

APPEALING: Section 47-5.31 (Table of dimensional requirements the RS-8 district)

Requesting a variance to allow a car shade structure to be located a distance of 4 feet from the front property line where the Code requires a minimum of 25-foot front yard setback.

APPEALING: Section 47-5.31 (Table of dimensional requirements the RS-8 district)

Requesting a variance to allow a car shade structure to be located a distance of 0.6 foot from the side property line where the Code requires a minimum of 5-foot side yard setback.

At 6:42 Mr. Shallenberger and Ms. Zamojski arrived.

Mr. Dunkel explained that the burden was on the applicant to demonstrate that the Zoning Administrator's interpretation was clearly erroneous.

Dwayne Dickerson, attorney for the applicant, displayed an aerial photo and other photos of the property and pointed out the car shade. He stated the car shade was not a structure and should therefore be allowed. Mr. Dickerson displayed a survey of the property showing the location of the car shade.

Mr. Dickerson read the definition of a structure from the ULDR and said he could not determine what was or was not a structure based on the definition. He said there had been a Code Enforcement case regarding the structure and he had argued that this was not a structure. Mr. Dunkel stated the Code Enforcement violation concerned the lack of a building permit, which used the Florida Building Code definition of a structure, not the ULDR definition. Mr. Dickerson said the property had been cited for both lack of a building permit and for locating a structure within the setback. Mr. Dickerson noted that the Code Enforcement Board vote had been 4 – 3 and he felt this indicated their reaction to the ambiguity of the definition.

Mr. Dickerson presented a petition signed by adjacent neighbors stating their support for the variance request.

Mr. Dickerson informed Mr. Sniezek that his argument was that the definition seemed to define *everything* as a structure; it was so ambiguous that no attorney or private citizen could differentiate based on this definition.

Mark Grant, the applicant's father, said his son had seen several of these car shades in the neighborhood and therefore assumed they were permitted. He said his son felt it was unfair that his car shade had been singled out.

Chair Centorino opened the public hearing. There being no members of the public wishing to address the Board on this item, Chair Centorino closed the public hearing and brought the discussion back to the Board.

Mr. Dickerson referred to the Code Enforcement citation, which noted the car shade was located in the front setback and lacked a permit.

Mr. Willey had visited the property and noted that the poles could be bolted to the concrete. Mr. Willey stated he believed this was a structure.

Chair Centorino felt this was a structure as well, because it was "big, it's solid...it's probably sturdier than most houses." She had visited the neighborhood and not seen anything that resembled this.

Mr. Stresau thought this was a structure as well, and remarked that in a hurricane, it would become "one huge flying object" which was what the building code was intended to prevent.

Motion made by Mr. Sniezek, seconded by Mr. Madfis, to approve the applicant's interpretation that the car shade was not a structure. In a roll call vote, motion **failed** 0-7.

Regarding the variance request, Mr. Dickerson showed photos of other car shades in the area. Mr. Grant did not know the addresses of all of the properties in the photos but stated he would provide these if the City wished. He could not say how close they were to his son's property.

Mr. Dickerson asked the Board to approve the variance requests to allow his client to do what other neighbors were doing. He stated the hardship was the lack of a garage to protect a vehicle.

Chair Centorino opened the public hearing. There being no members of the public wishing to address the Board on this item, Chair Centorino closed the public hearing and brought the discussion back to the Board.

Mr. Ladd feared that if the Board approved this variance request, it would be seen as

approving the car shades all over the City. He noted that in different neighborhoods it might or might not be appropriate. Mr. Ladd felt this should be address by a code change.

Mr. Dickerson said approval of this variance would not set a precedent. Mr. Dunkel agreed it would not set a precedent across the board, but on lots of similar sized properties it could. He agreed a code amendment was a better way to address this.

Motion made by Mr. Willey, seconded by Mr. Stresau, to approve both variance requests. In a roll call vote, motion **failed** 0 – 7.

Mr. Bond left the meeting at 7:20.

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2. Appeal No. 11-27 (Deferred from February 8, 2012)

APPLICANT: Thomas Tharrington
LEGAL: "Stilwell Isles", P.B. 15, P. 26, Block 2, Lot 2 Less N. 10.58 feet
ZONING: RS-4.4 (Residential Single Family/Low Density District)
ADDRESS: 308 Royal Plaza Drive
DISTRICT: 2

APPEALING: **Section 47-5.30 (Residential Single Family/Low Density District)**

Requesting a variance to allow the height of the structure along the (North) side yard to extend 27 feet 3 inches where code states where a building exceeds 22 ft. in height that portion of the building shall be set back an additional 1 foot per foot of building height above 22 foot.

APPEALING: **Section 47-3.2.B.1 (Nonconforming structure)**

Requesting a variance to enlarge a non-conforming structure, where the Code states that a nonconforming structure may not be enlarged or altered in a way which increases its nonconformity, but a nonconforming structure may be altered to decrease its nonconformity.

Mr. Stresau abstained due to conflict - notice filed as required. Mr. Shallenberger took his place on the dais.

Thomas Tharrington, applicant, stated he wanted to replace the existing flat roof with a sloped roof. He said he wanted his roof to be more compatible with the neighborhood and he wished the roof to cover the open balconies. He showed several photos of the property and the area and pointed out the portion of his house that would encroach into the setback.

Mr. Fajardo said at the previous meeting, there had been a question about the length of the building and what was included in the request, but Mr. Tharrington's photos showed this clearly.

Mr. Madfis recalled that a dormer on the north façade had been in Mr. Tharrington's previous plans and this had been confusing. The dormer had been removed and the issue was simplified to show the eave condition. Mr. Fajardo confirmed for Mr. Madfis that eaves were allowed to encroach up to one-third of the required setback. Mr. Madfis suggested the wall could be reconfigured to allow the encroachment to be the eave proportion of the roof.

Mr. Tharrington said the change would improve the integrity of the house; the neighbors unanimously supported the request and it would improve the neighborhood.

Chair Centorino opened the public hearing. There being no members of the public wishing to address the Board on this item, Chair Centorino closed the public hearing and brought the discussion back to the Board.

Mr. Madfis did not see a hardship; he believed there was a design solution that would not require a variance.

Mr. Cooper said he had considered what could be done at the property. He felt this was a reasonable request and said the height had been reduced and the owner's request was more specific now than when it was previously presented. Mr. Cooper thought the variance would bring the house into conformity with the rest of the neighborhood.

Mr. Shallenberger agreed this request was minimal and said he supported it.

Motion made by Mr. Cooper, seconded by Mr. Shallenberger to approve both requests. In a roll call vote, motion passed 7-0.

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3. APPEAL NO. 12-07

APPLICANT:	<u>Alex Gheorghiu</u> (<i>Deferred from February 8, 2012</i>)
LEGAL:	"Coral Ridge Galt addition", P.B. 27, P. 46, Block 17, Lot 1
ZONING:	RS-4.4 (Residential Single Family Low Medium Density District).
STREET:	2624 NE 23 rd Street
ADDRESS:	Fort Lauderdale, FL
DISTRICT:	1

APPEALING: Section 47-19.5 (Fences, Walls and Hedges)

Requesting a variance to an existing permitted wall to be located on the property line at a height of 6 feet, 6 inches, where the code requires a minimum 3-foot setback.

Mr. Stresau returned to the dais and Mr. Ladd stepped down.

Alex Gheorghiu, owner, stated he had provided the plans as the Board had requested and distributed a copy.

Mike Fontana, architect, said the existing wall had been approved at five feet in 1964 and Mr. Gheorghiu wanted to raise the wall to six foot six inches. The variance was required because the wall was on the property line. Mr. Fontana said the plans also showed existing landscaping, and noted that the hedge on the north property line would be filled in. They would also re-stucco the entire wall and add some architectural elements: caps and planters atop the wall.

Mr. Fajardo said this had come to Property and Right of Way Committee because two runs of block had been added to the wall, creating a violation. It had been discovered that the existing wall had been built in the wrong position. To solve this, a portion of right-of-way had been vacated back to the property owner. Mr. Fajardo explained that the five-foot wall would have been legal, non-conforming but the additional height was not legal.

Mr. Madfis recalled the Board had requested that some decoration be added to soften the appearance of the wall. He stated there was sufficient room for landscaping to be installed between the wall and the sidewalk.

Mr. Stresau said the owner had added a sheet to the plans showing where the landscaping would be kept or added.

Chair Centorino opened the public hearing.

Betsy Dow, President of the Coral Ridge Homeowners Association, said she had been discussing this with the owners for months. The homeowners association had agreed that they would accept whatever the Board approved.

There being no other members of the public wishing to address the Board on this item, Chair Centorino closed the public hearing and brought the discussion back to the Board.

Motion made by Mr. Shallenberger, seconded by Mr. Stresau to approve, per the plans the owner had submitted showing the wall details and including, but not limited to the landscaping on sheet four. In a roll call vote, motion passed 7 – 0.

4. APPEAL NO. 12-13

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APPLICANT: Philip L Grey
LEGAL: "Bossert Isles 46-42B, TR A W 70 AKA Lot 45
ZONING: RS- 8 (Residential Single Family/Low Medium Density District)
STREET: 1725 SW 17th Street
ADDRESS: Fort Lauderdale, FL
DISTRICT: 4

APPEALING: Section 47-19.2.P (Freestanding Shade Structure)

Requesting a variance to permit a free standing shade structure 3 feet 6 inches from the waterway, where code states Freestanding shade structures (such as a gazebo, a tiki hut, or a trellis) may be permitted when accessory to residential uses, in the required rear yard but no closer than five (5) feet from the rear property line except where a parcel is abutting a waterway, where they shall be no closer than ten (10) feet from the waterway.

John Scott Carr, architect, said they were requesting a shade structure within the setback due to the fact that some of the property was no longer usable "as it is in the waterway." Mr. Carr said the variance would allow then to be within 10 feet of the waterway, and he explained that the property line was actually in the waterway by just over nine feet. He stated the wet face of the seawall was their new property edge and they were requesting the shade structure be allowed at 3.5 feet from the wet face of the sea wall.

Mr. Fajardo said it was not uncommon to have property lines in the waterway. Mr. Dunckel said the code stated that this property yard was measured from the wet face of the seawall.

Mr. Carr said the shade structure would be a trellis that would extend toward the edge of the wet face of the sea wall. Chair Centorino noted that this would block the view of someone looking down the canal. Mr. Madfis agreed that the neighbors' views would be blocked and said he did not support this.

Mr. Stresau said Mr. Brewton had determined that yards should be measured from the wet face of the sea wall but Mr. Stresau had pointed out that if the sea wall fell in and/or was replaced, the measurement could change. Mr. Dunckel remarked that if the wall fell in or did not exist, the definition stated the measurement would be made from the edge of the waterway where no sea wall existed. He confirmed for Mr. Cooper that an owner could gain property by re-building a seawall, provided it was permitted properly.

Mr. Madfis pointed out that even measured from the property line, the shade structure was not 10 feet back.

Chair Centorino opened the public hearing.

Reiner Schwebel, neighbor across the street, said this would not block their view as much as the boat that was there now and he did not object to the request.

Gary Thomas, neighbor across the canal, said he would prefer to look at this than the boat he currently saw. He stated there would be no view obstruction and he did not object.

Lisa Grey, wife of the owner, said they could not use this portion of the property because it was always in sunlight. Since Mr. Schwebel did not object to the view obstruction, she asked the Board to consider the request.

Mr. Madfis said he appreciated the neighbors' comments, but there were other things that could be done to provide shade that would not encroach on the setback requirements.

Mr. Carr stated he had a discussion with zoning staff, who indicated the variance was "almost a certain possibility."

There being no other members of the public wishing to address the Board on this item, Chair Centorino closed the public hearing and brought the discussion back to the Board.

Regarding what Mr. Schwebel had said, Chair Centorino pointed out that the granting of the variance would not affect the boat on the property. She asked Mr. Carr the hardship. Mr. Carr said the owners had land that was not usable.

Motion made by Mr. Stresau, seconded by Mr. Madfis, to approve.

Mr. Cooper asked if the owner would like to make concessions; Mr. Carr stated Mr. Grey was out of town and requested a deferral.

Mr. Madfis withdrew his second of the motion.

Motion died for lack of a second.

Motion made by Mr. Sniezek, seconded by Mr. Cooper, to defer for 60 days. In a roll call vote, motion passed 6 – 1 with Mr. Stresau opposed.

5. APPEAL NO. 12-15

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APPLICANT: Reed Property Holdings
LEGAL: "Lauderdale Harbors Shopping", Center 48- 19B, Tract C S 30
N 60
ZONING: B-1 (Residential Single Family/Low Medium Density District)
STREET: 1073 SE 17 Street
ADDRESS: Fort Lauderdale, FL
DISTRICT: 2

APPEALING: Section 5-26 (Distance between establishments)

Requesting a special exception to allow a restaurant to sell alcohol that is incidental to the sale of food within 181 feet from another establishment that sells alcohol, where Code requires a minimum of 300 feet separating establishments that sell alcoholic or intoxicating beverages.

Lucy Reed, applicant, stated she owned the property and the restaurant in this strip mall. She said her customers had requested wine and beer.

Chair Centorino opened the public hearing.

John Downey, manager of the Village Well, a nearby restaurant that sold alcohol, said he did not feel it would be beneficial to have another establishment selling alcohol in this strip mall. He felt it would be detrimental to his business. He named other establishments in the neighborhood that sold alcohol, three of which were within 300 feet.

Mr. Madfis said he felt this was like any other entertainment area and he would favor this. He did not see how this would detract from other businesses in the area.

Mr. Downey confirmed for Mr. Shallenberger that he was concerned about his business, not the variance.

Mr. Dunckel said this was a request for a special exception, not a variance and it should be granted unless the record demonstrated it was contrary to the public interest, not to a neighbor's competitive advantage. He added that the parking requirement would not change if the establishment sold beer and wine.

Chair Centorino asked Ms. Reed how her business differed from the Village Well and Ms. Reed stated the Village Well was basically a bar that was open in the evenings and her establishment sold breakfast and lunch and was open from 7 AM until 5 PM.

There being no other members of the public wishing to address the Board on this item, Chair Centorino closed the public hearing and brought the discussion back to the Board.

Motion made by Mr. Willey, seconded by Mr. Madfis, to approve. In a roll call vote, motion passed 7 – 0.

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6. APPEAL NO. 12-16

APPLICANT: Las Olas Harbor Club LLC
LEGAL: "Lauder del Mar", P.B. 7- 30B, Block 11, Lot 11
ZONING: IOA (Residential Single Family/Low Medium Density District)
STREET: 1 N Birch Road
ADDRESS: Fort Lauderdale, FL
DISTRICT: 4

APPEALING: Section 47-19.3 (Boat slips, docks, boat davits, hoist and similar mooring structures)

Requesting a variance to allow use of five (5) existing permitted boat slips as an accessory use, without the existence of a principal building as the previous principal building has been removed where the code states that no boat slips, docks, boat davits, hoists, and similar mooring structures not including mooring or dolphin piles or a seawall, may be constructed by any owner of any lot unless a principal building exists on such lot and such lot abuts a waterway.

The applicant is also requesting that such variance be a limited term variance, which would permit use of the existing boat slips/docks without a principal structure until either a new principal structure is constructed, or until the applicant's building permit extension expires on October 14, 2014.

This item was heard out of order – first.

Chair Centorino announced the applicant was requesting a deferral.

Courtney Crush, attorney for the applicant, requested a 60-day referral.

Motion made by Mr. Sniezek, seconded by Mr. Cooper, to defer for 60 days. In a voice vote, motion passed unanimously.

Communication to the City Commission

None.

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Report and for the Good of the City

Mr. Cooper asked about the plans for case number three.

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There being no further business to come before the Board, the meeting was adjourned at 8:50 p.m.

Chair:

A handwritten signature in cursive script, appearing to read "Diana Centorino", written over a horizontal line.

Diana Centorino

Attest:

A handwritten signature in cursive script, appearing to read "Brigitte Chiappetta", written over a horizontal line.

ProtoType Inc.

Minutes prepared by: J. Opperee, Prototype Inc.

